IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5829 OF 1988

1. Bhima Bhagoji Redekar;
2. Smt. Shivubai Annappa Redekar;
3. Nana Bhagoji Redekar, deceased, by his heirs :
A) Pandurang Nana Redekar;
B) Dadu Nana Redekar;
C) Sou.Avubai Vithoba Kokitkar;
D) Sou. Muktabai Parsu Chavan;
E) Sou. Gangubai Shankar Jadhav;
4. Ishwara Balu Powar ... Petitioners

versus

1. Sarladevi Keshavrao Desai deceased, by her heirs :
A) Ravindra Keshavrao Desai;
B) Narendra Keshavrao

Desai;

C) Virendra Keshavrao
Desai;

D) Suniladevi Satwashil
Gaikwad;

E) Sou. Anjaladevi Narendra
Gaikwad;

2. Vijaysinha @ Dadasaheb
Balasaheb Desai, since
deceased, by his heirs :

A) Shambhosingh Vijaysinha
Desai;

B) Shivasingh Vijaysinha
Desai;

C) Priyanka Vijaysinha
Gaikwad. ... Respondents

...

Mr. N. D. Hombalkar, for the Petitioners

Mr. P. S. Dani withMr. S.M. Kamble and Mr. F.A. Mulla, for Respondents Nos. 1A to 1C.

Respondents Nos. 1D to 1E and 2A to 2C served.

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CORAM : A.M. KHANWILKAR,J.

18th JUNE 2004

ORAL JUDGMENT :

01. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order dated 3rd February 1984 passed by the Maharashtra Revenue Tribunal, Kolhapur, in Revision No.MRT-KP-24/1981. Briefly stated, the land in question is Survey No. 65 admeasuring 15 acres 18 gunthas situated at village Sule, taluka Ajara, district Kolhapur. The Petitioners claim to be tenants in respect of the suit land. The Respondents are the landlords of the suit land. This matter has chequered history. Suffice it to mention that earlier round of litigation culminated with the order passed by this Court in Special Civil Application No. 586 of 1965 decided on June 14, 1967. The order reads thus :

" By consent the orders of the Tribunal, the Collector and the A.L.T. are set aside and the matter is remanded to A.L.T., Ajra. The A.L.T. shall proceed with the enquiry under Section 32-G and the A.L.T. shall give both the sides sufficient opportunity to put in their say and adduce additional evidence if they so desire. A.L.T. shall then decide the matter considering the evidence already recorded and such fresh evidence as may be adduced by the parties.

There will be no order as to costs."

The present petition emanates from Section 32-G proceedings, which were directed to be proceeded with in terms of the above order. It is, however, relevant to note that while the said section 32-G proceedings were in progress, application was filed by the Petitioners-tenants under section 70(b) of the Act for declaration

that they are tenants in respect of the suit land and for incidental relief. That application has been answered against the Petitioners-tenants by the Tenancy authority by holding that the Petitioners were not tenants in the suit land. That decision was carried in appeal and, later on, in revision, but the view taken by the Tenancy authority that the Petitioners are not tenants has been affirmed and the same has attained finality. The section 32-G proceedings, which were required to be proceeded with in terms of order passed by this Court, referred to above, were conducted by the A.L.T., Ajra. The said authority by judgment and order dated September 30, 1978, proceeded to determine the purchase price in respect of the suit land. It was contended on behalf of the Respondents before the said authority that the issue of tenancy has been answered against the Petitioners, and if it is so, the question of determining purchase price in respect of the suit land does not arise. The said authority, however, took the view that since the High Court has directed further proceedings to be held under section 32-G of the Act and that order was passed by consent of the parties, the

question as to whether the Petitioners were tenants in the suit land cannot be gone into and was not open. This decision was carried in appeal by the Respondents. The appellate authority reversed the decision of the A.L.T. by judgment and order dated December 1, 1980. The appellate authority found that merely because the High Court directed continuation of section 32-G proceedings does not mean that the decision of the competent authority on the issue of tenancy between the parties can be ignored; and if that finding was to prevail, the question of continuing section 32-G proceedings, or, for that matter, determine the purchase price of the suit land does not arise. This view was questioned by the Petitioners before the Maharashtra Revenue Tribunal by way of revision, which, in turn, has been dismissed by the impugned judgment and order.

02. According to Mr. Hombalkar, for the Petitioner, since all earlier orders passed by the tenancy authorities between the parties were set aside by consent as is noted in the decision

of this Court in the earlier round, it presupposes that the Respondents landlords conceded the relationship between the parties to be one of landlord and tenant and the question of tenancy was no more open to be examined by any authority. He further submits that the record would indicate that the Petitioners were in lawful possession of the suit land on 1st April 1957 and in that view of the matter, the Petitioners became deemed purchasers by operation of law and, as a consequence of that, the process of determination of purchase price was inevitable. Reliance is placed on the decision of the Apex Court reported in A.I.R. 1983 S.C. 643 in the case of Amrit Bhikaji Kale v. Kashinath Janardhan Trade to buttress the above submission.

03. On the other hand, Counsel for the Respondents, Mr. Dani, contends that merely because earlier orders passed by the tenancy authorities have been set aside by consent, that does not presuppose that the Respondents accepted the relationship between the parties that of

landlord and tenant. He submits that in any case it is the Petitioners who themselves took out formal application, which is a substantive proceedings, under the provisions of section 70(b) of the Act for declaration that they were tenants. It is not open to the Petitioners now to contend that the said issue could not have been examined by the tenancy authorities. He further submits that the Petitioners questioned the decision rendered against them by the tenancy authorities right upto the revisional Court and that decision has become final. If it is so, it is too late in the day for the Petitioners to contend that the issue of tenancy was no longer open for examination of any authority. He further submits that as the issue of tenancy has been answered against the Petitioners by Competent Court, that decision will be binding on the parties having attained finality. In his submission, therefore, the status of the Petitioners is not of tenants in occupation on the Tillers' Day, for which reason the question of determination of purchase price under section 32-G of the Act does not arise. He submits that reliance placed on the decision of the Apex

Court, referred to above, by the Petitioners is wholly misplaced and inapposite to the fact situation of the present case.

04. Having considered the rival submissions, I have no hesitation in accepting the submission canvassed on behalf of the Respondents. In my opinion, the earlier decision of this Court, which is reproduced in extenso above, nowhere concludes the issue of tenancy between the parties, nor it can be inferred that the issue of tenancy was not open for examination. Obviously, therefore, the Petitioners were advised to take out application under section 70(b) of the Act for declaration that they were tenants in respect of the suit land on the Tillers' Day. Those proceedings having concluded against the Petitioners, the same will be binding between the parties and in proceedings under section 32-G of the Act, it was open to the authority to decide the matter relying on the said declaration. As the proceedings under section 70(b) of the Act have ended against the Petitioners, and it has been declared that the Petitioners are not

tenants in respect of the suit land, it necessarily follows that the question of determination of purchase price of the suit land will not arise; and, accordingly, there is no infirmity in the conclusion reached by the appellate Court, and as confirmed by the revisional Court that the said proceedings ought to be dropped.

05. In the circumstances, I find no substance in this petition. The same, therefore, fails and is dismissed. Rule discharged, with no order as to costs.

06. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

jg.91